ARGUMENT

OF

MR. M. E. OLMSTED,

*Before the General Judiciary Committee of the Senate, upon the consideration of a bill entitled "An act to carry into effect the provisions of the first, third, and seventh sections of the seventeenth article of the Constitution of the Commonwealth, and to provide penalties for the violation thereof," * delivered in the Senate Chamber, at Harrisburg, Tuesday, April 7, 1885.*

The meeting having been called to order by Senator Grady, Chairman, Mr. Olmsted, attorney for the Lehigh Valley Railroad Company, addressed the Committee as follows:

Mr. Chairman and Gentlemen of the Committee: The bill, which through your courtesy I am permitted to discuss, proposes to enact bodily the first, third, and seventh sections of the seventeenth article of the Constitution of this Commonwealth. We are told that this is the perfection of legislation, and that to argue against it is to contend that the Constitution itself is unconstitutional. Well, Mr. Chairman, Constitutions have been found unconstitutional before now. The constitutionality of the Constitution of the State of California is at this moment pending in the Supreme Court of the United

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* See the bill printed in full at the end of this book.

States, Mr. Justice Field, of the United States circuit court for the district of California, having pronounced it to be unconstitutional in a very learned opinion in the case of the county of *San Mateo* vs. *The Southern Pacific Railroad Company*, reported under the head of "*The Railroad Tax Cases*" in *13 Federal Reporter*, beginning at page 722. The Constitution of the United States is over and above all State laws and paramount to all State Constitutions. Do not understand me, however, as contending at this time that the Constitution of Pennsylvania in any wise conflicts with the organic law of the Federal Government, because where it would otherwise have conflicted its framers, as I understand it, have provided that it shall not apply. But there are many provisions of this bill which are in conflict with the Federal Constitution. Of them I shall speak further on. There are also several provisions of this bill which are plainly in violation of our State Constitution, and I think it quite possible to convince you that a law which recites, verbatim, the language of the Constitution itself, may, nevertheless, be in conflict with the Constitution which it recites, if not with its letter, at least with its spirit.

The first section is the Frame of a Free Railroad Law without the Necessary Safeguards and Restrictions.

Some portions of the Constitution execute themselves and no legislation is required; others are intended to furnish but the frame work, the outlines, the general principles of laws, the details to be filled in by the Legislature. Of this character is the seventeenth article of our State Constitution, as shown by the twelfth section thereof which provides that "the General Assembly shall enforce, by appropriate legislation, the provisions of this article." If it were to execute itself, what occasion for legislation? If the language of the Constitu-

tion were sufficient, what occasion for legislation? What greater force does a declaration of the Legislature have than a declaration of the Constitution? To make myself plain let me take, for instance, the first section of the seventeenth article, which is made the first section of this bill. It declares only certain general principles, and does not at all descend to details. The Legislature is supposed to supply them. Otherwise, it would have executed itself, and its framers would so have declared. If it were of such a character as that it could execute itself, the framers of the Constitution would not have provided for legislation to enforce its provisions. As it is not of such a character as to execute itself, its mere recital in an act of Assembly can give it no more force than its recital in the Constitution itself. Take the language

"Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States."

The plain intent of the Constitution was that, in order properly to enforce this provision, the Legislature should enact many things for the government and regulation of the association or corporation which was thus given the right to construct and operate railroads.

Heretofore the Legislature of this State, in 1849, found it necessary to enact a law of some twenty sections for the regulation of railroad companies formed under any *special act* of the General Assembly thereafter passed. It was deemed wise to provide for proper advertisement in the counties through which the road was to pass; it was deemed wise to provide the maximum amount of capital stock which any such corporation should be permitted to have, and the minimum which they were required to have, and that a certain amount per mile should be paid in before the company should attempt to exercise the greatest of all powers which can be given to

a company, the power to exercise the State's right of eminent domain; it was deemed wise to provide for certain publicity to be given to all their business; it was deemed wise to provide for the dividends they should be permitted to declare; it was deemed wise to provide the manner in which they might enter upon and take the lands of others for corporate purposes, and to provide a remedy for those whose lands were taken; it was deemed wise to provide that where a railroad interfered with or changed the site of any turnpike or public road, the same should be reconstructed at the expense of the railroad company, and on the most favorable location; it was deemed wise to provide certain rules and regulations for the management of the company's business, and certain limitations on the rates of toll which they should be permitted to charge. All these wise provisions certainly do not apply to the companies mentioned in the first section of this, which is a general act, because the act of 1849 relates only to those formed under special acts of Assembly.

In April, 1868, the Legislature of this State passed a general law authorizing the formation and regulation of railroad corporations. It provided many of the details contained in the act of 1849, and also some further provisions. It fixed a minimum number of citizens who might form a corporation, fixed the amount of capital stock which they were to have and the amount which they were required to have paid in in cash before they could obtain the authority of the Commonwealth to build a railroad, and required certain articles of association to be filed and recorded in the office of the Secretary of the Commonwealth. When thus formed the companies were to be conducted in the manner provided in the act of 1849.

None of these wise provisions are found in the bill now before you, which confers, not only upon corporations but also upon *any association*, the absolute and unqualified right to construct and operate a railroad between any points within this State.

Steam Roads may Enter Cities without Consent of Councils.

One of the provisions of the act 1868 was that: "This act shall not be so construed as to authorize any corporation formed under this act to enter upon and occupy any street, lane, or alley in any incorporated city in this Commonwealth, without the consent of such city having been first obtained." No such qualification is found in this bill, which gives, unqualifiedly, not only to any corporation, but, as you will observe, to *any association* organized for the purpose, whether incorporated or not, the right to construct and operate a railroad between any points within the State; and even as to corporations heretofore formed under the act of 1868, this qualification is repealed by the ninth section of the bill before you, which declares that: "All acts or parts of acts inconsistent herewith are hereby repealed." So that if this bill were passed in its present form any corporation now in existence, or which may hereafter be formed, may run a steam railroad from one end to the other of the city of Philadelphia, of Harrisburg, of Pittsburgh, or of any other city, and councils will be powerless to interfere. If this matter was of sufficient importance to engage the attention of the Legislature in 1868 it may possibly be of sufficient importance to engage the attention of Senators representing the cities I have named and the other cities of this Commonwealth.

Again, it has been found wise, heretofore, to provide the manner in which corporations of this State might connect at the State line with railroads from other States; but in this bill the right is given absolutely without qualification, and all inconsistent acts are repealed.

Grade Crossings.

Take the further words of the first section, "every railroad company shall have the right, with its road, to intersect, con-

nect with, or cross any other railroad." This authority is given absolutely and unqualifiedly, and all inconsistent acts or parts of acts are repealed.

Are these railroads to cross above grade, below grade, or at grade? If the latter, under what regulations is the crossing to be made and maintained? Corporations formed under the act of 1868, and having a right to cross at grade the tracks of other railroads were required to bear the expense of making and keeping the crossing in repair; it is also provided that "the company whose road crosses the track or tracks of another, shall keep at such crossings as many persons as may be required to give the necessary signals to prevent accident." In another act the Legislature found it the part of wisdom to provide that no railroad should cross the line of another railroad with more than a double track. None of these wise provisions are found here, but the right to cross with any number of tracks, and without the requirement of any watchman, is given absolutely and unqualifiedly, and all inconsistent acts or parts of acts are repealed. The tracks of all our trunk lines may be gridironed with crossings, not only by the tracks of corporations, but of "any association," so that ordinary passenger trains cannot be run with safety. This matter appeals directly to the officers of the Lehigh Valley Railroad Company, because it is but a short time, I believe within two years, that, in the State of New Jersey, near Bound Brook, against its opposition, another railroad company crossed the Lehigh Valley road at grade, and while a Lehigh Valley train was proceeding regularly, upon its own proper time, a train upon the other road came crashing into it, and great loss of life and property resulted.

Need I say more to convince you that the mere recitation of the general words of the first section of article seventeen of the Constitution is not a compliance with either the spirit or the words of the twelfth section which requires "that the

General Assembly shall enforce by *appropriate* legislation the provisions of this article?"

But, further, under this first section, if it applies, as it seems to do, not only to corporations hereafter organized, but also to those already in existence, any company or any *association* may construct a line between any points within the State. The restrictions heretofore placed upon them in entering cities, and, also, in crossing other railroads, are removed. It is, therefore, an enlargement of their charters, and is in violation of section ten of article sixteen of the Constitution, which provides that "no law hereafter enacted shall create, renew, or extend the charter of more than one corporation."

Part of Second Section not Objectionable.

To that provision of this bill which enacts that "All individuals, associations, and corporations shall have equal right to have persons and property transported over railroads and canals, and no undue or unjust discrimination shall be made in charges for, or in facilities for transportation of freight or passengers within this State, or coming from or going to any other State" the corporation which I represent, the Lehigh Valley Railroad Company, makes no objection.

That is very fair and proper legislation. It is within the spirit of the Constitution. It is fair and just. It must be recognized by everybody that that discrimination which operates between two shippers between the same points, which gives the one special rates which the other does not have; which builds up the one and destroys the other; which enables the owner of one coal mine, for instance, to get a better rate than his neighbor, so that the one may stand and prosper and the other be ruined and destroyed in his business; such discrimination as that is damnable. The company which I represent does not indulge in it; and, if it did, sir, no money could hire me to stand here and defend it.

PARTS OF BILL IN CONFLICT WITH COMPANY'S CHARTER.

We do object, however, to so much of the second section as reads as follows: "Persons and property transported over any railroad shall be delivered at any station at charges not exceeding the charges of transportation of persons and property of the same class in the same direction to any more distant station."

We object to this provision because it is in conflict with the company's charter, and because it would interfere with the successful conduct of the business operations of the company. I will not stop to comment on the famous *Dartmouth College* case. You are all familiar with it, and with the fact that it was then declared by the highest tribunal known to our law that a charter granted by a State is a contract within the protection of clause one of section ten of article one of the Constitution of the United States, which declares that no State shall pass any law impairing the obligation of contracts. I recently cited to you the case of the *Commonwealth* vs. *The Bank of Pennsylvania*, reported in *7 Harris* at page *151*, wherein Chief Justice Black declared that the decisions upon this point amounted not to a current, but to a torrent of authorities, so that no judge having a decent respect for the principle of *stare decisis*, which he declared to be the great bulwark of our liberty, could hold otherwise.

I am aware that the Constitution of 1857 provided that charters *thereafter* granted should be subject to alteration or amendment, provided, however, that it should first be found injurious to the people of this Commonwealth, and that the amendment should be made in such manner as that no injustice should be done the corporators; but there are a number of companies which would be affected by the passage of this bill, among them the Lehigh Valley Railroad Company, which were incorporated long before 1857, and in whose charters no power to repeal, alter, or amend was reserved. Those charters,

therefore, are preserved inviolate by that clause of the Federal Constitution to which I have referred, and no law of the State of Pennsylvania, not even the Constitution itself, can interfere with them. This principle was well understood by the framers of the Constitution, and is expressed in plain terms in section ten of this same seventeenth article, which reads as follows:

"SECTION 10. No railroad, canal, or other transportation company, in existence at the time of the adoption of this article, shall have the benefit of any future legislation by general or special laws, except on condition of complete acceptance of all the provisions of this article."

If it had been intended that the Constitution should apply to preëxisting corporations, there would have been no occasion for this section. That is a complete constitutional declaration that charters then in existence were not to be affected by this section—by this seventeenth article. Further than that, the Legislature, from that time until this, has recognized the fact that the Constitution does not operate upon those companies. Otherwise why would Senator Wallace, in the preparation of what is known as the "Wallace Act," for the incorporation and regulation of corporations, which he so carefnlly prepared in 1874, and which does him such great credit, why did he so carefully provide that preëxisting corporations, desiring to avail themselves of the provisions of that act, must first accept the provisions of the Constitution? and what occasion would there be for the provision found in the act of 1878—that the purchasers at sheriff's sale of the franchises of preëxisting corporations could organize and exercise those franchises only upon acceptance of the provisions of the new Constitution? The people of the State understood that it did not apply to existing corporations. It was so published, so declared, and so understood. So there we have the Constitution itself declaring it, the people understanding it, and the Legislature

acting upon that construction. If you desire anything further let me refer you to what the courts have said.

In *Hays* vs. *The Commonwealth*, *1 Norris*, *518*, the Supreme Court of this State refused to allow even so apparently trifling an alteration of a charter as the introduction of the cumulative style of voting provided by the Constitution, the charter providing a different method; and Mr. Justice Gordon, who delivered the opinion of the Court, said:

"But the constitutional convention claimed for itself no such power; on the other hand, it has expressly set down (article two of the schedule) that all rights, actions, prosecutions, and contracts shall continue as if the Constitution had not been adopted; and, by the second section of the sixteenth article, it is manifest that the convention did not intend to subject any private corporation to any of the provisions of the Constitution which might in any degree change the charter thereof. If otherwise, why say: 'The General Assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same, or pass any other general or special law for the benefit of such corporation, except upon the condition that such corporation shall *thereafter* hold its charter subject to the provision of this Constitution.'

"This section is so comprehensive and clear that nothing is left for surmise or doubt. Charters of private corporations are left exactly as the new Constitution found them, and so they must remain until the companies holding them shall enter into a new contract with the State by accepting the benefit of some future legislation. It is only on the theory that the manner of voting is not material that the cumulative system is sought to be saddled on this corporation; but if this company does not hold its charter *subject to the provisions of the present Constitution*, how can it be made subject to any one of such provisions material or immaterial?"

And if a consideration so immaterial could not be saddled upon a company, how do you propose to saddle upon it such conditions as will effectually prevent the operation of the essential franchises granted by the charter?

The decision which I have read was affirmed in *Ahl* vs. *Rhoads, 3 Norris, 319;* and in *Pennsylvania Railroad Company* vs. *Langdon, 11 Norris, 21*;* and again in *Commonwealth* vs. *Erie and Western Transportation Company*, decided in October of last year, but not yet reported.

Considering, then, that the new Constitution does not apply to the Lehigh Valley Railroad Company, and that the charter of that company is, by the Federal Constitution, prevented from impairment by the Legislature, I shall proceed to discuss this bill, not in its relation to the Constitution of this State, but to the Constitution of the United States and to the charter of this company.

How the Second Section affects the Lehigh Valley Railroad Company.

Now, just let me show you how this bill would operate upon this company. This company has no connection of its own with Philadelphia; it has, however, two outlets to that city—one by the Philadelphia and Reading road, over its North Penn branch, connecting at Bethlehem, this State, and one by way of the Pennsylvania railroad, connecting at Phillipsburg, in New Jersey. The distance by the Reading road is ninety miles; by the Pennsylvania it is one hundred and twenty-seven miles. The company has its own line to Perth Amboy from

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* In this case the Court went so far as to hold that the act of 1868, limiting liability of railroad companies to $5,000, in case of death resulting from their negligence, became part of the charter of a company which formally accepted it, and could not be repealed.

In *Lewis* vs. *Hollahan, 7 Outerbridge, 425*, the reasoning of this case was doubted, and a different conclusion reached. In the latter case, however, the railroad company has *not* accepted the act of 1868.

In *Commonwealth* vs. *Erie and Western Transportation Company*, (the latest case upon the subject), the Court held that a company chartered in 1865 was not subject to the requirements of the act of April 18, 1874, which was passed to carry into effect section 7 of article 16 of the Constitution.

which place its freight is taken by vessel to New York, and there it comes into competition, not only with the Pennsylvania and the Reading railroad companies, but also with the Delaware, Lackawanna and Western Railroad Company, the Delaware and Hudson Canal Company, the Central Railroad Company of New Jersey, the New York, Lake Erie and Western Railroad Company, and, I believe, one or two others whose lines do not enter the city of Philadelphia, and some of whom would not be, in any respect, subject to the provisions of this bill.

Now, the competition at New York is so great that the rate to that point is somewhat lower than it is to Philadelphia for the transportation of coal. That much may be conceded. What would be the effect of the passage of this bill, supposing it to be applicable to the Lehigh Valley Railroad Company? Why, in order to continue to ship and to sell coal in New York, it would have to abandon the Reading connection which it has, which is shorter than the line to Perth Amboy, and to adopt the Pennsylvania route, which is longer, in order to enable it to ship coal to New York for a lower price than it does to Philadelphia.

The presence of this company in Philadelphia certainly has some effect upon the coal market there. The fact that it has its choice of two routes tends to hold the two companies in check; but if you deprive it of the privilege of going in over the Reading line, you place it in the power of the Pennsylvania road to fix such rates as might exclude it from going into Philadelphia over that line. It would then be compelled either to give up the shipment of coal to Philadelphia or to give up the shipment of coal to New York, if this bill were applicable to it. Now, how would the citizens of Philadelphia be benefited by the withdrawal of the Lehigh Valley Railroad Company from that city? They would probably have to pay a higher price for coal than they pay now. How would they be benefited by the withdrawal of this company from New York?

The company would lose that portion of its profits which, though small, are of some help, and how would they make them up unless off the citizens of Pennsylvania?

That the city of Philadelphia is not injured by the cutting of rates at New York, I think can be readily shown. The Lehigh Valley Railroad Company opened its line to that city in 1875. Now, I want to show you that the general tendency of freights even in this State is downward. I have here the Auditor General's railroad report for 1865, which contains the report of the Lehigh Valley Railroad Company. I find that the tariff charged that year was, for through freight, lumber, &c., 2.65 cents per ton of 2,000 pounds per mile; for the same from Mauch Chunk to Easton, 3.25 cents, for through coal, 3 cents; for local freight, heavy, 4 cents; for local coal, 3.07 cents. In 1874, before it opened its line to New York, the average tariff for through and local freight was 1.88 cents. At the present time the average is 1.07 cents. The through rate for coal in 1874 was 2.21 cents. Now, how has the State of Pennsylvania or the city of Philadelphia been injured by this connection with the city of New York, and its shipment of coal there at a little lower rate than that for which it ships to Philadelphia? The rate from Mauch Chunk to Philadelphia at that time was $2. It is now $1 60 over the Lehigh Valley railroad.

But I shall not attempt, Mr. Chairman, to enter into the details of this subject of discrimination. I am not familiar enough with the details of railroading. But any gentleman who heard the speech of Mr. Roberts, on a similar occasion two years ago, or who has taken, or will take, the trouble to read his remarks, cannot fail to be convinced that the passage of this law must injuriously affect the general transportation lines of this Commonwealth, and also the interests of the Commonwealth herself.

The State Discriminated when she Operated Railroads and Canals.

Why, Mr. Chairman, that discrimination is a practical necessity was taught by the State of Pennsylvania herself when she owned and operated some of the railroads and canals upon which this bill is designed to take effect. The State herself was accustomed to make rebates and to allow drawbacks, as I will proceed to show you.

In the journal of the Canal Commissioners, now preserved among the records of the Auditor General's office, I find it recorded under date of Tuesday, March 7, 1840, that, on motion, it was

"*Resolved*, That the collector at Philadelphia be directed to allow, upon the presentation of the proper certificate, a drawback of twenty cents per barrel on each and every barrel of flour arriving at his office which shall have been cleared at Pittsburgh, and passed over the State improvements thence to Philadelphia, the said drawback to be credited to the transported of such flour on subsequent tolls accruing at that office."

A very considerable drawback, operating against a shipper from the first two or three stations east of Pittsburgh, you will readily perceive, resulting in the making of a greater charge for a shorter distance than for a longer one, and a resolution was offered on this same date providing against imposition, whereby it might be made to appear that freight was clear at Pittsburgh, which had in reality been taken on at a station this side.

Again, under date of Thursday, March 3, 1842, it is recorded, that

"The President laid before the Board a communication from D. Lack & Co., relative to a drawback on passengers carried the whole distance over the public works, from Philadelphia to Pittsburgh or from Pittsburgh to Philadelphia, which was read and considered."

This letter, which would doubtless be interesting, was not preserved, but it is of record that, after considering it, the Board resolved to allow a drawback of $1 50 for each passenger carried in the first-class, or express line of packet or car line the whole distance from Philadelphia to Pittsburgh, or from Pittsburgh to Philadelphia.

On March 12, 1844, the Board of Canal Commissioners

"*Resolved*, That all anthracite coal arriving at Bristol or at Columbia, directly from the place of its original shipment, should be entitled to a drawback of one mill per ton for every mile it shall have been carried on the Pennsylvania canal."

This drawback was allowed because, at this time, there had arisen competition in the coal-carrying trade. The motive is clearly expressed in another resolution adopted on the same day, which is as follows:

"*Resolved*, That all bituminous coal passing Southward and Eastward, and arriving at Columbia or Philadelphia, or at any intermediate point between those places directly from the place of its original shipment, shall be entitled to a drawback of two mills per ton for every mile it shall have been carried on the Pennsylvania canal or railroads: *Provided*, That the drawback authorized on coal arriving at Bristol shall not be allowed unless the Lehigh Coal and Navigation Company shall reduce the toll for carrying coal on their improvement from Mauch Chunk to the Pennsylvania canal at Easton, to thirty-five cents per ton on all coal destined to pass on the Pennsylvania canal to Bristol."

Under date of December 9, 1844, the journal of the Canal Commissioners contains the following report:

"The president laid before the board a communication from Frederick Watts, Esq., President of the Cumberland Valley Railroad Company, relative to the destruction of the roailroad bridge at Harrisburg, and the consequent necessity of making a reduction of tolls on the line of the railroads between Chambersburg and Philadelphia, so as to prevent the trade from leaving said roads. Which was read and considered,

and a conference had with a committee of the directors of said company.

"On motion, the following preamble and resolutions were unanimously adopted, viz:

"WHEREAS, The destruction of the railroad bridge at Harrisburg has rendered it necessary to transport all goods passing over the Cumberland Valley railroad to and from Philadelphia over the Harrisburg bridge by horse power, whereby the expense of transportation will be increased;

"*And whereas*, The State of Pennsylvania is interested in common with the Harrisburg and Lancaster Railroad Company and the Cumberland Valley Railroad Company in retaining and increasing, as far as practicable, the carrying trade upon the Philadadelphia and Columbia railroad, and on the roads of said companies especially during the suspension of canal navigation. Therefore

"*Resolved*, That all goods passing over the Philadelphia and Columbia railroad from Philadelphia to Dillerville, which shall reach the borough of Chambersburg by way of the Cumberland Valley railroad, shall be entitled to a drawback of twenty-seven cents per ton of 2,000 pounds, in the following manner, to wit: The Cumberland Valley Railroad Company shall cause their collector at Chambersburg to give to each transporter a certificate of the amount of goods which he shall deliver at Chambersburg from Philadelphia by way of the Philadelphia and Columbia railroad and the Harrisburg and Lancaster railroad, and the Cumberland Valley railroad, in which certificate he shall state the name of the transporter, the name of the consignee, and the number of cars in which they may be transported, and the amount of drawback, in words at length, to which such goods are entitled, agreeably to this resolution; which certificate, upon being indorsed by the transporter, shall be received by the collector of tolls at Philadelphia in payment of any subsequent motive-power charges.

"*And be it further resolved*, That the collector of tolls on the Philadelphia and Columbia railroad at Lancaster shall allow a deduction on the motive-power charges of twenty-seven cents per ton of two thousand pounds on all goods which shall clear at Lancaster for Philadelphia, and which shall have been

carried from the borough of Chambersburg over the Cumberland Valley railroad and the Harrisburg and Gettysburg railroad: *Provided*, He shall be satisfied by a certificate from the collector of tolls at Chambersburg, similar to that given by the collector at Pittsburgh, to entitle goods shipped from that place to a drawback, indorsed by the collector of tolls at Harrisburg, that the goods on which such deduction shall be claimed were carried from Chambersburg over the said railroads, which certificate he shall retain to the end of each quarter as his authority for making such deduction, and then return the same as a voucher to the Auditor General of the State of Pennsylvania."

This discrimination, you will readily perceive, must have resulted in a greater charge for a long haul than for a short one. A greater charge from Carlisle to Philadelphia than from Chambersburg to Philadelphia was made by the State in order to prevent trade from going to Baltimore, and to prevent the diversion of traffic to the Susquehanna and Tidewater canals.

Under date of March 3, 1848, the Board of Canal Commissioners of Pennsylvania unanimously resolved to allow a drawback of three fourths of one mill per ton per mile upon all anthracite coal arriving at Columbia from the place of its original shipment.

On the 29th of October, 1850, a drawback of fifty cents was allowed on each through passenger between Philadelphia and Baltimore.

On the 31st of March, 1851, a drawback was allowed on "each passenger carried over the Philadelphia and Columbia railroad to or from Philadelphia and going on to or coming off of the Harrisburg and Lancaster railroad from or to Harrisburg or points west thereof and not being through passengers to or from Pittsburgh."

That was a discrimination in favor of the city of Harrisburg, and it was made because at that time there had arisen a competing line—the Lebanon Valley route to Philadelphia.

On Thursday, April 22, 1852, the State of Pennsylvania, acting through her newly-elected Canal Commissioners, allowed the drawback contained in the following resolution:

"*Resolved*, That the collector at Philadelphia be authorized to allow a drawback of all tolls over and above twenty-five cents paid on each barrel of flour transported the whole distance over the public works from Pittsburgh to Philadelphia: *Provided*, Said flour has been brought on to the canal at Pittsburgh by the Pennsylvania and Ohio railroad, from Palestine, Ohio, or points west thereof: *And provided*, That the transporters furnish the collectors with satisfactory evidence that the flour upon which the drawback is cleared was shipped at Palestine, or points west thereof, and has been carried from such point the whole distance to Philadelphia by the way of the State works."

This cut, which was evidently a severe one, was, doubtless, made to capture western traffic bound for New York, and prevent its going over competing lines. As we have already seen shippers from Pittsburgh had the advantage of a drawback of twenty cents over shippers from points nearer Philadelphia. Shippers from Palestine, Ohio, now received an advantage over shippers from Pittsburgh. Each and every one of these drawbacks must have resulted in making larger charges for some of the short hauls than was made for longer hauls.

If the State of Pennsylvania, in early days when competition was light, could not manage her public works without some discrimination, how is it to be supposed that in these days of fierce rivalry her corporations can succeed as against the corporations of other States without some similar discrimination? It is not to be presumed that in making these discriminations the State authorities were actuated by any desire to prejudice the interests of the State, or of any of her people or communities. The intention was rather to benefit the whole people. This course was found necessary to that end, and it ought not, therefore, to be assumed now that because railroad

companies are occasionally compelled to allow preferential rates, they are, therefore, in every instance working to the disadvantage of the Commonwealth. If the State could not successfully operate railroads and canals without some discrimination, she ought not to expect better things of her creatures. The stream cannot rise higher than its source.

The third section of this bill reads as follows:

SECTION THREE IN CONFLICT WITH SECTION TWENTY-ONE OF COMPANY'S CHARTER, AND PREVENTS SUCCESSFUL OPERATION OF ITS ROADS.

SECTION 3. No discrimination in charges or facilities for transportation shall be made between transportation companies and individuals, or in favor of either, by abatement, drawback, or otherwise, and no railroad or canal company, or any lessee, manager, or employé thereof shall make any preferences in furnishing cars or motive power.

The Lehigh Valley Railroad Company has a contract for fifteen years with Pullman's Palace Car Company. The Pullman cars are conceded to be the finest and best sleeping and parlor cars in the world. They are exceptionally well built and strong, it being the boast of the Pullman Company that no passenger was ever killed in one of its cars. They are particularly well adapted to fast trains. In order to obtain the use of these cars upon their road, the Lehigh Valley Railroad Company was obliged to contract that no similar cars could be used for fifteen years. Under the provisions of this bill, any individual owning a parlor car would have a right to have it attached to the trains of this company upon the same terms and conditions as the Pullman cars are attached. Then, as no preferences are to be given in furnishing motive power, the company would be compelled to attach to its fast trains all sorts of cars coming off from other roads, or which any individual might, for any reason, desire to attach

thereto. So that cars of different widths, different sizes, and of different constructions, with different varieties of brakes, might be joined together, greatly endangering the safety of the whole train. This provision is clearly in violation of the contract with the Pullman Company and the charter of the company under which that contract was made.

The twenty-first section of the original charter of the Lehigh Valley Railroad Company provides:

"That it shall and may be lawful for the president and managers, from time to time, to ordain and establish rules and regulations for the due ordering of all traveling and transportation on the said road and for its preservation, with power to alter, repeal, enlarge, or amend the said rules and regulations as they may deem expedient; and that they shall have full power and authority to prescribe the kinds and descriptions of cars, carriages, or wagons to be used on the said road, for the conveyance of passengers and the transportation of the mail, or of goods, wares, merchandise and minerals, and to regulate the speed at which they shall travel, and to adopt and enforce such rules and regulations in relation to the transit thereof as they may deem expedient; and the said company are hereby authorized and empowered that, as soon as any portion of the said railroad is perfected, to place thereon cars, carriages, or wagons constructed as they may deem best adapted for the transportation of mails, passengers, and commodities to the advantage of the public, and shall permit individuals to place such cars, carriages, or wagons thereon of such construction, *and under such limitations and restrictions* as they may deem proper."

Section three of this bill is diametrically opposed to this section of the charter. The one gives the company the very necessary control and management of its trains and motive power, and permits a reasonable and proper discrimination in their management and use, and the other provides that no preferences whatever shall be made.

The Lehigh Valley Railroad Company has arrangements for running fast through trains from Philadelphia to Buffalo, in

New York. Some of the roads are used by agreement, and some by lease. It is absolutely essential to the running of these trains that preferences shall be made in furnishing cars and motive power; as, for instance, over the road of the Pennsylvania and New York Canal and Railroad Company, from Wilkes-Barre to Elmira. The Lehigh Valley Railroad Company, by owning the capital stock, virtually owns the Pennsylvania and New York railroad. Nevertheless, in law they are two distinct and separate corporations. If the Central Railroad Company of New Jersey, the Delaware, Lackawanna and Western Railroad Company, or any of the other companies whose lines center at Wilkes-Barre, should, as they might under this bill, demand that no preferences should be made in furnishing cars or motive power to the Pennsylvania and New York road, great damage would be done to the Lehigh Valley Railroad Company; its business would, in fact, be paralyzed. It would be utterly impossible for it to continue the business which it is now doing with such great advantage to the public if not to itself.

The Schedules required by Section Four.

Now we come to section four, which requires the company to adopt and keep posted in at least two places at each depot where freights are received or delivered, certain schedules setting forth, first, the different kinds and classes of freight to be carried therefrom, and second, the different places to which such freights shall be carried. Let me show you how this law would operate. I have here a book showing the local freight tariffs and classification of freight of the Lehigh Valley Railroad Company, and the branches upon which it runs its own trains. It is, as you perceive, a large book, and its pages are well crowded. It is alphabetically arranged, contains an enumeration of all the articles commonly carried upon the railroad, from "A" to "ampersand," from "acid" to "zinc," and the articles

thus enumerated are divided into seven classes—1, 2, 3, 4, A, B, and C. Complete as this enumeration and classification is, I am told that scarcely a day passes but what, at some station, some article is presented for transportation not found in this list; then the question arises to which class it belongs. If this bill should become a law, the classification of articles thus unexpectedly presented will be matter of great difficulty and danger for the freight agent. I remember to have read of an English guard upon a road whose rules prohibited the carrying of pet dogs on passenger cars. One day two ladies entered the same compartment, one carrying a pet rabbit and the other a turtle. The guard demurred to the rabbit, and it was relegated to the baggage car, while the turtle was permitted to remain under the seat. The lady who owned the rabbit complained of this discrimination, and claimed that her rabbit did not come under the rule relating to dogs any more than the turtle. The guard scratched his head, and finally declared that "dogs is dogs, and rabbits is dogs, but turtles is insects."

Suppose this law to be in force and such an accident to occur at Easton. The lady would doubtless have the conductor arrested under the terms of this bill. If he were tried at Easton and were known to my friend Judge Reeder and the jurymen to be an honest sort of a fellow, they would doubtless hold that, if he had done any wrong, it was unintentionally, and would acquit him; but if the lady availed herself of the opportunity afforded by the seventh section of this bill, she might have him indicted away up in Bradford county, where, perchance, a certain very respectable head granger might be foreman of a jury of grangers, who would see in him nothing but the minion of a great soulless corporation, and they would send him to jail so quick that it would make his head swim.

But it might be even worse, for I find in this bill that this schedule must positively specify every article of freight to be carried, the different places to which every article may be car-

ried, the charges for transportation of every article, &c., &c., and the transportation of anything at a price not set down in the schedule is made an indictable offense, so that if the officers of a railroad company omitted anything from the schedule, I am not certain but what, if that article were presented for shipment and the company carried it, they would be indictable. If they should refuse to carry it, they certainly could be indicted. Impalement upon either horn of the dilemma is equally fatal, and in either case the poor freight agent may be indicted, convicted, and imprisoned.

In addition to the classification of freight, this book contains two hundred and eight (208) large and closely printed pages, containing the names of all the stations upon the Lehigh Valley railroad and branches, and the local freight tariff from each station to each station upon the said road and branches. Upon each page there are two hundred and fifty-four (254) names of stations, making a total of fifty-two thousand eight hundred and thirty-two (52,832) names. Then, as opposite each name there are marked the price of the seven different classes of freight and the number of miles from station to station, you will notice that in addition to the names of the stations there are four hundred and twenty-two thousand six hundred and fifty-six entries in this book (422,656).

The preparation of this book required several months of labor and cost over $1,000.

But, as I understand this bill, this schedule would be insufficient. It must set forth not only the stations upon the company's own road, but also the stations upon other roads not only in this State, but in every State, and actually in foreign countries to which freight may be forwarded from stations upon the Lehigh Valley railroad. As such stations greatly exceed in number the stations upon the Lehigh Valley road, it follows that the schedule would have to be many times larger than this book which I hold in my hand. This book contains only

the local freight tariff. When the through freight tariff is added it will be much larger. When this is completed, two copies must be filed in each station. There are about three hundred stations on that road and branches, so that there would have to be about six hundred of these books.

Again, the schedule required by this bill must set forth not only the freight rates, but also the tolls or charges "for the furnishing of cars or motive power, or for the moving, carrying, expediting, receiving, delivering, forwarding, transferring, loading, unloading, storing, or hauling of property or for other services rendered in the transportation of property within this State or going to any other State or foreign country."

I was going to say that it would take a book ten times the size of this, but I am satisfied that one a hundred times as large would not contain all the information which, by this bill, is required to be posted in at least two places in each freight depot.

Further than that, it would, of course, be very burdensome. The company would have to run a printing establishment nearly as large as the State printer's. The cost would be a great burden not contemplated by its charter.

As a copy of the schedule posted in each depot is to be filed in the office of the Secretary of Internal Affairs, and there preserved, it follows that if there are, say, three hundred stations upon the Lehigh Valley railroad and branches, three hundred of these books must be so filed. Every time a change is made in the freight tariff upon a single item enumerated in these books, a complete new schedule must be made, posted, and filed. If this law is applied to all the railroads of the Commonwealth, it would be well for you to pass an appropriation of some hundreds of thousands of dollars for the enlargement of the building now occupied by the Department of Internal Affairs, as its present dimensions would scarcely enable it to

contain the schedules which would be filed within the first twelve months.

The expense of preparing and printing these schedules would be an enormous burden upon the companies not contemplated by their charters, but this would be by no means the worst feature of this requirement of the bill.

No change of tariff upon any single item can be made until an entirely new schedule has been prepared and posted at least two days before it can go into effect. The Lehigh Valley Railroad Company ships coal to Buffalo and also to New York. Suppose a rival road should cut the rate to either of these points ten cents per ton. This would be sufficient to divert the trade, and, before the Lehigh Valley Railroad Company could prepare and post a new schedule, as required by this bill, its rival might run into the city of Buffalo so much coal that the Lehigh Valley could not dispose of a ton there for a twelvemonth. This provision is unwise, impracticable, burdensome, and unjust, and is in violation of the terms upon which the company accepted its charter.

As Section Five Affords Ample Relief why Increase Statutory Crimes in Section Six?

The fifth section provides that

"Any railroad company making any overcharge for services rendered, as enumerated in this act, shall for each overcharge be liable to pay to the party thus overcharged a sum equal to three times the entire charge thus made, and for each violation of any other provision of this act be liable to the party injured for damages treble the amount of the injury suffered."

Three times, not of the amount overcharged, but three times the amount of the entire charge.

This would seem to be ample punishment and compensation to the party aggrieved, and it is difficult to see why, except in a vengeful spirit, the sixth section has been introduced into

this bill at all. Why is an injury for which such ample damages are provided made the occasion also for a criminal indictment? What reason is there for adding to the list of statutory crimes and inflicting criminal and disgraceful punishment for a mere overcharge of price? The provisions of this bill are so unusual, and so complicated, and so liable to misunderstanding that the best-intentioned officer in the world might readily find himself in a position to be fined and imprisoned. The Federal Constitution has a clause, and there is a similar clause in our State Constitution, against the imposition of excessive fines and against cruel and unusual punishments. I do not stop to consider them, to discuss them, nor do I know that I claim that they apply to the provisions of this bill, but, possibly, they may be worthy of consideration.

I object to this section because it is an insinuation against the character of railroad officials. There may be exceptions, but, in the main, every gentleman within the sound of my voice will agree with me that the officers and agents of our great trunk lines of railroads of the grade more likely to be affected by this bill are among the most respectable and the most law-abiding citizens in their respective communities. And I do object to the insinuation contained in this section that nothing but the terrors of the felon's cell can induce them to refrain from violations of the law.

Suits for Damages should be Brought in County in which Contract is Made.

But I pass on to section seven, which provides that

"Any of the actions for damages and any of the indictments authorized for misdemeanor by this statute may be commenced and prosecuted to judgment and conviction in any county in this State in which the railroad or canal company that is sued, or the official, director, or employé thereof is indicted may exist, or be or hath a branch railroad, a branch canal, or

an office, and process, both mesne and final, may issue from the proper courts of such county to any other county or city of this State, and have like force as if within the county in which suits are brought or indictments be pending."

As to actions for damages what good reason can be given why they should not be brought, as other civil actions are brought, in the county in which the contract is made, subject to the laws already in force for change of venue whenever either party shall make affidavit that, owing to prejudice, an impartial trial cannot be had in this county? As the bill now stands, for a contract containing an overcharge made, say, at Wilkes-Barre, the company, because it has a branch road in Sullivan county, might be sued at Laporte, a place, if I mistake not, several miles off from any railroad. If a suit were only for twenty-five dollars or fifty dollars or a hundred dollars or two hundred dollars, the inducement to settle, and thus avoid the necessity of going to that town with books and papers and witnesses, would be very great. This provision of the act would afford a great reason for blackmailing suits I fear, which would be brought against the companies upon the slightest pretext in the hope that, rather than go to the expense of defending them in remote and distant counties, some compromise would be made. It is an unjust and unwise provision, and no reason exists for it. Where a party suffering an overcharge is entitled to recover three times the amount of the charge, certainly he can afford to sue, as other suitors sue, in the county in which the contract was made.

Unconstitutionality of Section Seven Permitting Indictments in County other than where the Offense was Committed.

But when I turn to the provision that citizens of Pennsylvania may be indicted in any other county than the one in which the offense is alleged to have been committed, I cannot

express my abhorrence and my surprise that at this day such a provision should be seriously submitted for legislative contemplation. The proposition that a free and independent citizen of Pennsylvania may be seized and carried into a remote county and there tried by and among total strangers for an offense committed elsewhere is too monstrous to be entertained. It is opposed to the common law of England, to the common law of this country, and to the commonest feelings of liberty and right. It was partly in support of the right to be tried by a jury of the vicinage that the War of Independence was fought. Let me read to you what Judge Cooley says upon this subject in his work upon "Constitutional Limitations," commencing on page 23. He says:

"From the first the colonists in America claimed the benefit and protection of the common law.

* * * * * * * * * *

And when the difficulties with the home government sprung up, it was a source of immense moral power to the colonists that they were able to show that the rights they claimed were conferred by the common law, and that the King and Parliament were seeking to deprive them of the common birthright of Englishmen. Did Parliament attempt to levy taxes in America, the people demanded the benefit of that maxim with which, for many generations, every intelligent subject had been familiar, that those must vote the tax who are to pay it. Did Parliament order offenders against the law in America to be sent to England for trial, every American was roused to indignation, and protested against the trampling underfoot of that time-honored principle that trials for crime must be by a jury of the vicinage. Contending thus behind the bulwarks of the common law, Englishmen would appreciate and sympathize with their position, and Americans would feel doubly strong in a cause that was right not only, but the justice of which must be confirmed by an appeal to the consciousness of their enemies themselves."

And, again, on page 319, Mr. Cooley says:

"Many of the incidents of a common law trial by jury are

essential elements of the right. The jury must be indifferent between the prisoner and the Commonwealth, and to secure impartiality challenges are allowed, both for cause, and also peremptory without assigning cause. The jury must also be summoned from the vicinage where the crime is supposed to have been committed, and the accused will thus have the benefit of his trial of his own good character and good standing with his neighbors, if these he has preserved; and also of such knowledge as the jury may possess of the witnesses who may give evidence against him. He will also be able, with more certainty, to secure the attendance of his own witnesses."

For their security in the enjoyment in this great liberty, the citizens of Pennsylvania are not dependent upon the common law either of England or of this country. Not only does the Federal Constitution contain a clause providing that every accused man shall be tried by a jury of the county or district in which the fact was committed, but every other State, I believe, except New York and California, has a like provision in its Constitution; and, also, the Constitution of Pennsylvania, the very Constitution which this act purports to carry into effect, contains, in its declaration of rights, this language:

"SECTION 9. In all criminal prosecutions, the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor, and in prosecutions by indictment or information *a speedy trial by an impartial jury of the vicinage.*"

What vicinage means no lawyer needs to be informed. It is what was called in Law Latin the *visnetum*; in Law French the *visne*. It is what we call the venue. It is the county in which the offense was committed. The State of Arkansas has a similar provision in its Constitution.

A law of the State of Arkansas authorized the court, in certain cases, to change the venue arbitrarily. Under this law George Osborn was tried and convicted in Pulaski for a murder com-

mitted in Saline county. An appeal having been taken to the Supreme Court of that State, declared the law to be void, because in conflict with that clause of the State Constitution which guarantees to the right of trial by an impartial jury of the county or district in which the crime was committed. Mr. Justice Clendenin, who delivered the opinion, says:

"We find, by reference to the sixth article of the amendments to the Constitution of the United States, substantially the same declaration that we find in the section of our Constitusion, which we have copied. By the history of the Constitution of the United States we are informed that the bill of rights was not made a part of that great instrument by the wise and good men who perfected it, because, as they asserted, the Constitution itself was made a part of the rights of freemen; but many objections being made, the declaration of rights was made a part of the Constitution by the amendment, and it is now substantially a part of the Constitution of most if not all of the States of the Union. * * * It was that jealous spirit in behalf of the liberty and rights of the people that induced the early founders of our Government to make that plain and explicit in the organic law which otherwise would be doubtful or left to different or adverse construction, and, therefore, they declared that a person charged with crime shall have, among other rights, the right to 'a speedy and impartial jury of the county or district in which the crime may have been committed.' This was a constitutional right of this defendant."

See *Osborn* vs. *State*, *24 Ark.*, *629.*

The State of Wisconsin has a similar provision in her constitution. A law of the State authorized a change of venue upon the affidavit of the district attorney that a fair trial could not be had in the county where the fact was committed, but in *Wheeler* vs. *State*, *24 Wisconsin*, *52*, the Supreme Court of the State held, *Paine*, *J.*, that

"The statute purporting to authorize a change of venue on the motion of the prosecutor, against the objection of the accused, is in conflict with the constitution and void."

The constitution of Tennessee has a similar clause in her constitution. An act of her State Legislature provided that where offenses were committed "on the boundary of two or more counties, or within a quarter of a mile thereof," the accused might be tried in either county. The object of this law was obvious. In such cases, because of the difficulty of showing in which county the offense was actually committed, the greatest criminal might escape entirely. The Supreme Court of the State declared the object of the law very commendable, and that it ought to be sustained if it could be; nevertheless, it was judicially declared to be void because in conflict with the constitutional right of every man to be tried by a jury of the county in which the crime was committed. *William Armstrong et al.* vs. *The State, 1 Cold, 338.* And the same court at the same term declared another similar provision contained in another section of the criminal code to be unconstitutional for the same reason, although, before the venue was changed, a panel of over several hundred jurors had been exhausted and only eight selected. *Kirk* vs. *State, 1 Cold, 344.*

And again the same court declared in *State* vs. *Charles and John Denton, 6 Cold, 539,* that

"A prisoner's right to be tried in the county where the offense is alleged to have been committed is secured to him by the constitution, and he cannot in any case be deprived of that right without his consent being given in open court."

The State of New York, as I have mentioned, contains no express declaration in its Constitution upon the subject, nevertheless, as long ago as 1830, Mercy, J., declared in *People* vs. *Mather, 4 Wendell, 229,* that

"There is no proposition better established than that the venue in a criminal case must be laid in the county where the offense was committed."

The cases from which I have cited are, all but one, murder cases, in which the guilt of the person was found by the jury,

and yet the Court held that the verdict must go for naught because the accused was tried in another county than that in which the offense was committed. Do you propose to put the officials of railroad companies in a worse position than that allowed and guaranteed by the Constitution to murderers and felons? Gentlemen, you cannot do it.

I need not discuss this proposition further before a committee of lawyers. If anything further need be said, I leave it for my friend Colonel Herr, who is here, and I see he has taken off his coat and proposes to follow me. His experience and ability in this branch of the law renders him far better qualified than myself to discuss it, and his eloquent voice will, doubtless, be raised in condemnation of this contemplated outrage upon the rights of citizens. It seems to me that the fact that the projectors and friends of this measure are willing, under the pretense of carrying into operation one portion of the Constitution, to flagrantly violate other and equally important portions of the same organic law, shows the undue feeling of bitterness which prompts them, and demands of you excessive care in your scrutiny of all the provisions of this bill.

Shippers not Demanding Passage of this Bill.

Now, Mr. Chairman, what is the pressure for the passage of this bill? The representatives of certain exchanges, and boards of trade, and city councilmen, &c., have appeared, or are to appear, before you and theorize upon this great problem of transportation. I have not seen or heard of any great uprising of the people who actually ship over these railroads. The only complaint directly made, perhaps, was that of Mr. Walker, I think, who represented the Retail Coal Dealers' Association of Philadelphia. He said: "As a class of traders, we pay one general rate; but it is understood, and we believe, that there are a few favored firms who are granted special

rates—such as rebates—which are not granted to others. This is in violation of their charters and of the Constitution of the State. Such discrimination injures our trade, and the natural result is to paralyze our business in order to build up a monopoly for a few. We wish all to be placed on an equality. We are unable to furnish proof—so adroit is their management that their tracks are covered—but we are led to believe that coal is delivered to some few firms at from twenty-five to fifty cents per ton less than to others."

Well, if that is the case, and it can be discovered, is not the act of 1883 an ample remedy? Why do not all the other members of this coal association bring suit against these companies and recover treble damages?

If they cannot discover if any rebates were made, how would the publishing of the proper rate upon the walls of the depot enable them to discover whether that rate had been violated? But I find that the most of the gentlemen representing these organizations, who have appeared here, do not favor this bill. Mr. Wilson Welsh, for instance, chairman of the Commercial Exchange Committee of Philadelphia, said to you:

"One great object we have in view is to avoid the passage of a law embodying principles which would interfere with the trade from outside the State. * * * * The danger we foresee is the passage of a law which will throw impediments in the way of the lines transacting their business. That is something, too, which would affect not only Philadelphia, but also the whole interior of the State, because, as every one must know, a vast amount of business flows into and through our State from other States."

That was very well said; it is very pertinent, and it is directly in opposition to the passage of this bill.

Now, I find upon this desk of Senator Smith, who has kindly granted me the use of it for this occasion—while I have been sitting here somebody has thrown upon it an anon-

ymous circular, purporting to come from the Wilkes-Barre Board of Trade, to the Senate and House of Representatives of Pennsylvania. I have been able to glance over it but hastily, but it seems to urge upon you the passage of this bill. It is not signed by anybody, and nobody can tell whether it came from Wilkes-Barre, or where it did come from. The grievances set forth are chiefly that lower rates per mile are charged on through freights from Buffalo and other points, passing through Wilkes-Barre to New York and Philadelphia, than are charged to Wilkes-Barre. That is very probable. It is absolutely required by the competition which prevails at New York. But there is nothing in this circular—there is no grievance here which would be cured by this bill, except such as are already covered by the act of 1883. If any citizen of Wilkes-Barre is unjustly discriminated against, he has an ample remedy in the law as already upon the statute books, and there is no occasion to burden them further.

Argument of Mr. Norris.

Probably my friend, Mr. Norris, who spoke to you on behalf of the Philadelphia Maritime Exchange, went further than any of the others, and summed up the grievances and the ills for which this bill is supposed to be a panacea.

Mr. Norris is a gentlemen for whom I have great friendship; is a gentleman for whom I have great respect, and when I differ with him it is with reluctance. I do not know that he claims, I do not find in his argument, of which he has kindly furnished me a copy, that he claims that this bill will cover all the grievances which he enumerates; but, if he does, I must respectfully differ with him.

Now, first, he says that the city of Philadelphia is injured because, being four hundred miles nearer Europe than is Baltimore, and only twelve miles further from the West, she is

discriminated against in the grain-carrying trade. He says because the Pennsylvania Railroad Company has entered into competition with the Baltimore and Ohio company at Baltimore, and has cut the rates there to meet—as I understand it was done—to meet a cut of the Baltimore and Ohio company, while it has preserved full rates at Philadelphia that city is prejudiced. Now, I do not see that that is the case. It may be the case; but I do not see that this bill will remedy it. You cannot pass a law which will prevent the Baltimore and Ohio Railroad Company from cutting rates to Baltimore. If you prevent the Pennsylvania from cutting down to meet the rate of the Baltimore and Ohio, all the grain will go to Baltimore, and it would go by the Baltimore and Ohio road.

No more would go to Philadelphia than does now, and the State would be deprived of whatever benefit it would otherwise get from the transportation of a part of the grain through this State to Baltimore, which is something, as I will shortly show you.

Mr. Norris says that the city of Philadelphia is robbed to the extent of $5,000,000 by an anthracite combination which has bought up and obtained control of all the anthracite coal lands in eastern Pennsylvania, and that coal is sold in Wilkes-Barre at $2 50 per ton and in Philadelphia at $6 25 per ton. I know nothing as to the correctness of these statements. But concede them to be true. How will the passage of this bill improve the matter? The companies may not discriminate in freights, but if they own the coal they may sell it at whatever price they please.

He complains that the price of bituminous coal is kept up in Philadelphia by reason of an agreement whereby the Baltimore and Ohio keeps out of Philadelphia and the Pennsylvania keeps out of Baltimore. Would the passage of this bill compel the Pennsylvania Railroad Company to cut the rates to Baltimore, or the Baltimore and Ohio to cut the rates

to Philadelphia? Certainly not. If such combination as this does exist, it would not be interfered with in the slightest degree by the passage of this bill.

He complains that in the matter of gas-coal the Philadelphia City Gas Trust is discriminated against to the extent of $1 95 per ton. If there is a discrimination of this kind, why does not the Philadelphia City Gas Trust bring suit against the companies, under the act of 1883, and by recovering treble damages turn that which has heretofore been a losing game into—

Senator GRADY. Is the gas trust discriminated against?

Mr. OLMSTED. I say I understand it to be charged that coal is sold to some other institution $1 95 cheaper than it is sold to the gas trust. (To Mr. Norris.) Am I correct? (Mr. Norris nodded assent.)

Mr. OLMSTED. The law to-day provides an ample remedy for evils of that kind, if they exist.

Mr. Norris complains, further, that the Reading Railroad Company charges $1 28 per ton more for the transportation of coal than is necessary to enable it to pay dividends on its capital stock. That is a proposition with Mr. Norris on the one side, and the officers, receivers, trustees, stockholders, and the bondholders, on the other; but, conceding that Mr. Norris is right and they are wrong, how will it be affected by this bill so long as its charges are within the limits of its charter, and so long as it makes no discrimination between shippers? Will this bill tend to reduce the tariff? Surely not.

After showing that the difficulty with Philadelphia arises largely from competition at other points, he proceeds to show that competition at Philadelphia would be of no benefit to her. There are, he says, already five routes from the anthracite coal region to that city. Three of these competing routes, according to his classification, are the Reading, the Schuylkill canal, and the North Penn. Now, as the Schuylkill canal and North

Penn are both leased to and operated by the Reading, it will be seen that there is not much competition between them. It would certainly be a very startling, as well as a very edifying sight to see a freight war break out between these three branches of the Reading road. I do not apprehend that we will live to see anything of that kind. The other two are the Belvidere division of the Pennsylvania Railroad Company, and the Shamokin and Sunbury division of the Pennsylvania Railroad Company, both branches of the same line. It is not likely that these two branches of the road of that company will get into any great conflict with each other. Now, if those five roads should get into a conflict, the city of Philadelphia would then be in the same position as New York is, and she would then, probably, get the advantage of competitive rates. But there are but two routes from Philadelphia to the anthracite regions. The Lehigh Valley Railroad Company has no line to that city. It has, however, two connections, one with the Pennsylvania, and one with the Reading. The rates are fixed by the latter companies, but the fact that the Lehigh Valley may take its choice of these lines is a potent factor in compelling better rates than would otherwise be obtained, and is of advantage to the city of Philadelphia. The Lehigh Valley has its own line through the State of New Jersey to Perth Amboy, near the city of New York. It runs also its own cars to Buffalo, New York. If you pass this bill, the Lehigh Valley must either give up its traffic with New York, or its traffic with Philadelphia. If it withdraws from Philadelphia, the anthracite business will be left entirely in the hands of the Pennsylvania and Reading, and they may combine to fix what prices they please. If, on the contrary, it withdraws its anthracite trade from New York, it will lose that portion of its business, and that portion of its profits, and it stands to reason that the difference must be made up, if at all, off the citizens of Pennsylvania. In neither event will, Phila-

delphia be benefited. In either event, the company and the State will be injured.

State Revenues Affected.

Now, how is the State of Pennsylvania benefited by the passage through the State of the grain, to Baltimore, which, as I mentioned a few minutes ago, would be cut off by the passage of the pending bill? How is it benefited by the carrying of through freight to New York and Philadelphia, even if the railroad company does have to carry it at a little lower rate than to Baltimore?

Let me show you just why and how the State will be affected. For every dollar of receipts which this company derives from carrying coal to Buffalo or to New York, the State gets a tax of eight tenths of one cent. For every dollar of profits which it divides among its stockholders the State gets five cents, and the State has heretofore imposed a tax on coal and tonnage and upon other branches of the business. Through the kindness of the Auditor General's Department, I am able to give you a statement of the taxes which the Lehigh Valley Railroad Company and the companies which form part of its system paid to the State during the last thirty years. In the earlier years of its existence, of course, they were small, and the most of the taxes have been paid in later years.

Tax on capital stock,	$2,279,213 20
Tax on gross receipts,	833,201 50
Tax on loans,	180,716 54
Tax on coal,	196,789 93
Tax on tonnage,	361,357 60
Total,	$3,851,278 77

If you interfere with the business of the company to that effect, you interfere with the revenues of the State; and as the

same reason applies to all other great transportation companies, it may become you to consider this matter in connection with the warnings recently given by our very efficient Auditor General, Mr. Niles, upon the financial condition of the State.

Corporations have some Rights in their Property.

It seems to be considered, Mr. Chairman, that railroad companies have no rights which anybody is bound to respect. They are common carriers, and their roads are public highways, and, therefore, it seems to be considered that the public may go upon them, and take possession of them and use them, and that there are no private rights in them. I do not so understand the law. Corporations are artificial persons, and have no souls; but their stockholders are natural persons, having not only immortal souls to save, but mortal bodies to clothe and feed as well; and having invested their money in this property, under solemn compact with the State, it seems to me that they have some right to be heard.

The capital stock of the Lehigh Valley Railroad Company is held by between 6,000 and 7,000 shareholders, and its bondholders number, probably, a great many more. One of the largest stockholders is Lehigh University, endowed by Judge Packer, and presided over by Dr. Lamberton, formerly of this city, and one of the most benificent institutions in this Commonwealth. St. Luke's Hospital, at Bethlehem, which was also largely endowed by Judge Packer, is largely interested as a stockholder. With the exception of two or three large blocks, the ownership of this stock is scattered far and wide. It is held by widows and orphans and trust estates. The bonds which are secured upon this property and upon its branches are also held everywhere throughout this Commonwealth.

The Lehigh Valley Railroad Company is a law-abiding corporation. Its officers desire that they may live as closely to

the heart of the Constitution as possible without surrendering any of the essential franchises granted by the charter of this company. They have seldom, probably never before, appeared here opposing any legislation, but this proposed bill does so vitally affect the interests of that company, the interests of its shareholders, the interests to which the bondholders have a right to look, that they have felt it their duty, in the performance of their trust, to have some representative here and to lift their voice in opposition to this measure; and, therefore, I have said what I have said.

I have not urged all the objections which can be urged to this bill. I have not dwelled at all upon the fact that, as it interferes with and must tend to enhance the price and practically to prohibit the carrying of freight through this State to other States, it is an interference with that clause of the Federal Constitution which reserves to Congress the exclusive right to regulate commerce with foreign nations, among the several States and with the Indian tribes. That point, which is very important, will, doubtless, be touched upon by those gentlemen who will follow me. But it seems to me that the objections which I have urged are sufficient to warrant you in placing upon this proposed legislation the seal of your condemnation.

AN ACT

To carry into effect the provisions of the first, third, and seventh sections of the seventeenth article of the Constitution of the Commonwealth, and to provide penalties for the violation thereof.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That all railroads and canals shall be public highways, and all railroad and canal companies shall be common carriers. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each the other's passengers, tonnage, and cars loaded or empty without delay or discrimination.

SECTION 2. All individuals, associations, and corporations shall have equal right to have persons and property transported over railroads and canals, and no undue or unreasonable discrimination shall be made in charges for or in facilities for transportation of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad shall be delivered at any station at charges not exceeding the charges for transportation of persons and property of the same class, in the same direction, to any more distant station, but excursion and commutation tickets may be issued at special rates.

SECTION 3. No discrimination in charges or facilities for transportation shall be made between transportation companies and individuals, or in favor of either by abatement, drawback, or otherwise, and no railroad or canal company, or any lessee, manager, or employé thereof shall make any preferences in furnishing cars or motive-power.

SECTION 4. That each railroad company shall adopt, and at each depot where freights are received or delivered, shall keep

posted up, for public inspection, in at least two places, schedules which shall plainly state:

First. The different kind and classes of freight to be carried therefrom.

Second. The different places to which such freights shall be carried.

Third. The conditions under which allowances or advantages in any form may be granted upon shipments made or services rendered.

Fourth. The charges by freight rates or tolls or otherwise for the furnishing of cars or motive-power, or for the moving, carrying, expediting, receiving, delivering, forwarding, transferring, loading, unloading, storing, or hauling of property, or for other services rendered in the transportation of property within this State, or coming from or going to any other State or foreign country, and the bills for such service shall show what part of the charges is for moving or carrying, and what part is for the other facilities or services enumerated as aforesaid. Such schedules may be changed from time to time as hereinafter provided, but no such schedules shall be changed in any particular except by the substitution of another schedule containing specifications above required, which substituted schedule shall plainly state the time when it shall go into effect, and copies of which prepared as aforesaid shall be posted as above provided at least two days before the same shall go into effect, and the same shall remain in force until another schedule shall as aforesaid be substituted. The said schedules shall avoid undue and unreasonable discriminations, and it shall be unlawful for a railroad company to charge or receive more or less compensation for services rendered than shall be specified in said schedules: *Provided*, That nothing contained in this act shall be construed to require the railroad company aforesaid to post its charges for receiving or delivering freight or other services incidental to terminals facilities in any other depot than that to which said charges may apply.

Fifth. It shall be the duty of each railroad company to file, or cause to be filed, with the Secretary of Internal Affairs a copy of each schedule posted as required in this section, and this shall be done within fifteen days after posting as aforesaid, and it shall be the duty of the said Secretary of Internal

Affairs to file and preserve the same as a part of the record of his office.

SECTION 5. Any railroad company making any overcharge for services rendered, as enumerated in this act, shall, for each overcharge, be liable to pay to the party thus overcharged a sum equal to three times the entire charge thus made, and for each violation of any other provision of this act, be liable to the party injured for damages treble the amount of the injury suffered. In actions brought as aforesaid, damages sustained in the period of a year or part of a year may be declared upon or complained of generally and as one separate cause of action, and so whether such damage be sustained in one year or different years, and such separate cause of action may be joined in one action. But nothing contained in this act shall be construed to exempt any railroad company from any duty, liability, or penalty imposed by law.

SECTION 6. Any director or officer of any corporation or company acting or engaged in any of these matters and things enumerated in this act, or any receiver or trustee, lessee, or person acting or engaged as aforesaid, or any agent or employé of any such corporation or company, receiver, trustee, lessee, or person aforesaid, or of one of them alone, or with any other corporation, company, person or party aforesaid, who shall willfully do, or cause or willingly suffer to permit to be done, any act, matter, or thing in this act prohibited, forbidden, or declared unlawful, or who shall aid or abet therein, or who shall willfully omit or fail to do any act, matter, or thing in this act required to be done, or cause or willingly suffer or permit any act, matter, or thing required by this act to be done, not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any violation of this act, or aid or abet therein, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than two thousand dollars and be liable to an imprisonment not exceeding six months for each and every offense.

SECTION 7. Any of the actions for damages, and any of the indictments authorized for misdemeanor by this statute, may be commenced and prosecuted to judgment and conviction in any county in this State in which the railroad or canal company that is sued, or the official director or employé whereof

is indicted may exist, or be or hath a branch railroad, a branch canal, or an office and process both mesne and final may issue from the proper courts of such county to any other county or city of this State, and have like force as if within the county in which such suits are brought or indictments be pending. In the trial of such suits for damages, or indictments for misdemeanors, the jury shall in all cases, under the instructions of the court, determine whether the damages sued for have been sustained, or the offense for which the indictment is being tried hath been committed.

SECTION 8. That nothing in this act shall be construed to prevent property of or for the United States or this Commonwealth, or for charitable purposes, or for exhibitions or public fairs from being carried or transported at lower rates than for the general public.

SECTION 9. All acts or parts of acts inconsistent herewith are hereby repealed.